IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 3153 of 2007(A)

OPE.9/2005 of MUNI-MAGI.COURT, PERAMBARA

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PETITIONER:

K.M.KURIAN, S/O.MATHAI,
AGED 64 YEARS, KOOTUNGAL HOUSE,
KOORACHUNDU AMSOM, ATHIYODI DESOM,
KOYILANDY TALUK, KOZHIKODE DIST.

BY ADV. SRI.SANTHARAM.P

RESPONDENTS:

M.M.SCARIAH, S/O.MATHUNNI,
AGED 67 YEARS, MURINHAKALLEL, KOORACHUNDU
AMSOM, ATHIYODI DESOM, KOYILANDY TALUK,
KOZHIKODE DIST.

ADDL. RESPONDENTS:

2. STATE ELECTION COMMISSION
CORPORATION OFFICE COMPLEX
L.M.S.JUNCTION, PALAYAM, THIRUVANANTHAPURAM

3. DIST. ELECTION OFFICER/DIST. COLLECTOR
CIVIL STATION KOZHIKODE

(IMPLEADED AS ADDL. RESPONDENTS VIDE ORDER ON I.A.5341/07 DT. 16/7/07)

R1 BY ADV. SRI.K.M.FIROZ
SMT.M.SHAJNA
R2 7 3 BY ADV SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXTS:

EXT.P1: TRUE COPY OF THE ELECTION O.P.NO: 09/05

EXT.P2: -DO- OF THE I.A. 489/06

EXT.P3: -DO- OF THE ORDER DT. 29.8.06 IN I.A. 489/06

EXT.P4: -DO- OF I.A.744/06

EXT.P5: -DO- OF THE ORDER DT.29.11.06 IN I.A.744/06

jj /TRUE COPY/

P.A.TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 3153 OF 2007 A

Dated this the 16th July, 2007.

JUDGMENT

This writ petition is filed challenging the order of the Munsiff-Magistrate, Perambra in I.A.744/06. The grievance of the writ petitioner is disallowing of the prayer by the learned Munsiff in calling for the documents relating to double voting. The learned Munsiff disallowed the prayers on two grounds viz., (i) the delay in making the application and (ii) as per the rules it is to be destroyed within one year and since the period is over it may not be proper to summon the documents. I have been taken through the election petition and in para 5 of the election petition gives clear cut details regarding the alleged double voting by giving the name as well as the ward where the votes had been so cast. In the case of double voting before getting the confidential documents viz., ballot papers the court has to prima facie get convinced that the name of the alleged persons figure in the voting list of two wards and that their identity is established and then only it can be found out whether they have cast vote in two places, which as per the law is void. I am informed by the learned counsel appearing for the election commission that the documents are not yet

destroyed and direction has been given to the Collector to keep the documents in safe custody till the case is disposed of by the court. Now the only question is regarding delay. If these documents are not forthcoming then virtually election petition itself will become infructuous because without proving that fact election petition cannot be proceeded with or in other words they are vital documents for a proper decision of the case. So, though there is delay since there is specific pleading in the petition itself, I feel opportunity must be given to get the documents examined in accordance with law. Therefore, the order under challenge is set aside and the learned Munsiff, on prima facie satisfaction of the fact that the person's name figure in two voters' list in two different wards and that their identification is proved then call for the confidential documents and then proceed to examine in accordance with law. I also direct the election authorities not to destroy the said documents until the case is finally disposed of by the court. I am also informed by the learned counsel for the writ petitioner that so far as the prayer relating to summoning of the other document there had been some delay in payment of bata that also may be considered sympathetically and the necessary documents be called for in accordance with law

and the matter be disposed of. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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